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Sen. Richard Bray, Chair
Sen. David Ford
Sen. William Alexa
Sen. Timothy Lanane
Rep. Jesse Villalpando, Vice Chair
Rep. Kathy Richardson
Rep. Ralph Ayres
Rep. Dale Sturtz



Lay Members:

Hon. Randall Shepard
Hon. Ernest Yelton
Mary Lou Schnell
William Overdeer
Sarah Taylor

COMMISSION ON COURTS

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MEETING MINUTES

Meeting Date: August 6, 1998
Meeting Time: 10:00 A.M.
Meeting Place: State House, Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Richard Bray, Chair; Sen. David Ford; Sen. Timothy Lanane; Rep. Kathy Richardson; Rep. Dale Sturtz; Honorable Randall Shepard; Honorable Ernest Yelton; William Overdeer; Sarah Taylor.

Members Absent: Sen. William Alexa; Rep. Ralph Ayres; Mary Lou Schnell; Rep. Jesse Villalpando, Vice Chair.

CALL TO ORDER AND OPENING REMARKS

Senator Bray called the meeting to order at 10:15 a.m. and scheduled the next two meetings for September 10, 1998, at 10:00 a.m. and September 24, 1998, at 10:00 a.m. The Commission then approved the minutes of the meeting of July 2, 1998.

DISCUSSION OF WHETHER TO CREATE NEW MAGISTRATES OR COURTS

Judge Paul Mathias, President of the Indiana Judges' Association, referenced his *Indiana Lawyer* article "Choosing Among Paths" (copies of the article were mailed to Commission members prior to the meeting) and reiterated the fact that while the state bears a higher cost for new judges than new magistrates, there is no right answer when determining whether to add a judge or a magistrate. He stressed the importance of a careful analysis by local units to determine the best use of their resources, including a consideration of space and the specific types and numbers of cases heard by existing judicial officers. Judge Mathias also stated that the two types of judicial officers share relatively similar powers and their effect on litigants is the same.

Judge Barbara Harcourt, Magistrate Committee Chairperson for the Indiana Judicial Conference, testified that magistrates solve a number of practical problems but that there are philosophical issues that should be considered. She stated that these issues include the principle of the separation of powers and the desire to avoid the creation of a bureaucracy in the judicial branch due to the fact that magistrates are not elected officials. Judge Harcourt stressed that in her experience, magistrates are well qualified, knowledgeable in the law and dedicated.

She stated that an informed discussion over whether to request magistrates or judges should take place at the local level. In response to several Commission members' questions, Judge Harcourt clarified that

magistrates are especially appropriate for certain kinds of matters, including family law cases, and in high volume courts. She testified that though some judges carefully review each case heard by magistrates and others perform a “rubber stamp” function, as a magistrate become more experienced, the judge’s confidence in his or her abilities increases. Judge Mathias explained that IC 33-4-7-4 clearly delineates what magistrates can and cannot do.

Magistrate T. Edward Page, Lake Superior Court (Criminal Division), testified that magistrates have existed in Indiana as a secondary judicial system since the beginning of its statehood. Magistrate Page stated that magistrates serve an important judicial function because they can serve more than one judge. They require less staff and can readily move between courts and hearing rooms. They can be utilized as a judge pro tempore because of their specialized knowledge. In addition, full-time magistrates are as free from conflict as full-time judges. Magistrates are uniquely suited to handle specialized matters such as outside juries and extraditions. They can standardize the way cases are handled and deal with administrative problems as well.

He stressed that there are limits to a magistrate’s power, including the inability to exercise the power of mandate, and that magistrates cannot enter final appealable orders. In response to Representative Sturtz’s question, Magistrate Page stated that magistrates are paid at the level of 80% of a judge’s salary and participate in Public Employees’ Retirement Fund, not the Judges’ Retirement Fund.

Magistrate Page also stressed that a magistrate position can function as a natural transition to a judgeship because it serves as an excellent training ground and gives localities a way to judge how a lawyer operates on the bench.

REQUESTS FOR JUDICIAL OFFICERS

(1) Allen County:

Judge Paul Mathias, Allen Superior Court, presented the request for two (2) magistrates for the Allen Superior Court’s Civil Division and one (1) magistrate for the Allen Superior Court’s Criminal Division. Judge Mathias distributed a handout to the members explaining the rationale for the request¹. Judge Mathias explained that this is the busiest small claims court in the state and the current wait to have a small claims case heard is 140 days. The current backlog is such that a civil jury trial cannot be heard before the year 2001. He testified regarding the need for an additional magistrate in the criminal division, stating that it has experienced a 138% increase in felony filings annually since 1990 with no increase in the number of judicial officers.

He also pointed out that while filings have increased and more prosecutors and police officers have been hired, there has been no increase in judicial officers to help handle the caseload. Judge Mathias told the Commission that because he cannot comply with the speedy trial rule, he is close to being forced to release criminals. He stated that three (3) judges have already heard 100 jury trials during the first half of 1998. In closing, Judge Mathias thanked the Commission for their past support.

In response to questions from Commission members, **Judge Gull, Allen Superior Court**, explained that while no criminal cases have been dismissed yet, she has been required to release several criminal defendants from custody because she could meet the 70-day time limit.

In response to Senator Lanane’s question, Judge Mathias explained that the use of alternative dispute resolution “keeps the court’s head above water”. He stated that while civil cases are automatically referred to alternative dispute resolution, it resolves only the easy cases. Senator Bray commented that perhaps a better solution would be to create a new court rather than add magistrates. Judge Mathias responded that a new court is not a possibility due to current political realities in Allen County.

¹A copy of the handout is on file in the Legislative Information Center, Room 230 of the State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

Judge Thomas Ryan, Allen Circuit Court, testified regarding the need for one (1) magistrate for the Allen Circuit Court to help handle family relations, paternity, and IV-D child support and enforcement cases. He suggested that the magistrate not be funded until 1999 after the report on the success of the alternative dispute resolution project is due. Judge Ryan distributed a handout to the members explaining the rationale for the request.² He reported that mediation is working very well for the circuit court and as a result there are very few civil trials. He closed his comments by stating his belief that the public deserves better responsiveness from the courts and expressed his support for the superior court's request for magistrates, particularly in the criminal division.

(2) Marion County:

Judge Patricia Gifford, Marion Superior Court, presented the request for five (5) judges and ten (10) magistrates for the superior court. Judge Gifford distributed two handouts to the members documenting the need for the additional judicial officers requested.³

The additional 15 judicial officers requested would facilitate the creation of a new family law division, assist the environmental and probate courts with their caseloads, and could also be used to hear child abuse and neglect cases. Judge Gifford testified that the Weighted Caseload Study illustrates Marion County's need for 24 judicial officers, and the officers requested are needed to handle the courts' current caseload and to meet the public's needs.

In response to Judge Yelton's question, Judge Gifford stated that while there is insufficient space for the existing judicial officers, a dialogue with the county administration is occurring in an attempt to solve the problem.

Senator Ford asked for clarification of the purview of the environmental court. Judge Gifford explained that the court handles any ordinance violations, including those involving health issues and hospitals. She stated that the goal is to combine the environmental court with the creation of a community court to handle low-level quality of life crimes such as vandalism, for example. Judge Gifford reported that a federal grant has been awarded to fund such a program with a start date of January 1, 1999.

(3) Vanderburgh County:

Judge Maurice O'Connor, Vanderburgh Superior Court and, presented the request for three (3) superior court magistrates. Judge O'Connor testified that additional magistrates would help handle criminal matters. He stated that criminal defendants have been released from custody due to the speedy trial rule. Judge O'Connor reported that the Vanderburgh County jail is under a federal court order to resolve its problem with overcrowding. He stated that other areas in which more magistrates would be helpful include domestic cases because of the appellate court requirement that matters involving children be resolved within 60 days, protective orders, mental health hearings, and small claims.

Judge O'Connor indicated that the Weighted Caseload Study does not reflect actual caseload because it does not count re-docketed hearings. He reported that the most recent annual statistics show 1,500 new domestic filings and 3,500 re-docketed domestic hearings, in addition to 12,000 new small claims filings and 55,000 re-docketed small claims hearings. Judge O'Connor expressed concern due to the fact that he is having difficulty meeting requirements and serving the public.

Judge Carl Heldt, Vanderburgh Circuit Court, presented the request for one (1) circuit court magistrate. Judge Heldt testified that the circuit court has been staffed with one judge and one magistrate since 1979, and that from 1990 to 1997, the circuit court's caseload has increased 39%. In 1997, there were 37 criminal felony jury trials, including nine (9) murder trials. By comparison, there have already been 25 jury trials in 1998. He explained that by court order, the circuit court judge is also the President of the Corrections Complex Board overseeing a minimum security facility with a current population of 180

²A copy of the handout is on file at the Legislative Information Center. (See footnote 1).

³Copies of the handouts are on file at the Legislative Information Center. (See footnote 1).

residents, which will be increasing to approximately 230.

Judge Heldt reported that he administers the community service program, work release program, drug and alcohol program and the probation department, all of which require additional judicial attention. He stated that with an additional magistrate, the court will be able to have two (2) trials at a time, which will enable the court to be more efficient and will lower the population held temporarily in jail awaiting hearing and sentencing appearances.

In response to Senator Bray's question, Judge Heldt stated that magistrates conduct jury trials unless the litigants object. Judge Mathias confirmed that both statute and case law allow it. Magistrate Page clarified that a judge does review the case and makes the final order.

In response to Senator Bray's suggestion that a new court might serve Vanderburgh County's needs better than magistrates, Judge O'Connor commented that while he appreciates the merits of the suggestion, he believes that magistrates will serve their needs better and more economically.

Representative Avery addressed the Commission in support of Vanderburgh County's request and stated that he was unaware of any opposition to the request within the county.

REVIEW OF PRELIMINARY BILL DRAFT

The Commission reviewed the preliminary bill draft prepared by the Commission's attorney, George Angelone, concerning the extension of the Commission's expiration date from June 30, 1999 to June 30, 2003.⁴ The Commission approved it for recommendation to the 1999 General Assembly.

ADJOURNMENT

With there being no further business before the Commission, Senator Bray adjourned the meeting at 12:15 p.m.

⁴A copy is on file at the Legislative Information Center. (See footnote 1).